THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.2405 of 2007

Dated:05.04.2007

Between:
The Eluru Lorry Owners Association.

... Petitioner

AND

The Govt.of A.P., rep.by its Secretary, Endowments Department, Secretariat, Hyderabad, and others.

... Respondents

the HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.2405 of 2007

ORDER:

Eluru Lorry Owners Association filed this writ petition challenging the communication of the fifth respondent to Deputy Superintendent of Police, Eluru, requesting to provide police assistance on 03.02.2007 to remove one Chekuri Satya Vara Prasada Raju Lorry Owners Association, Eluru, from the land admeasuring Acs.10.47 in survey Nos.697 and 702 belonging to Sri Markandeya and Omkara Visweswara Swamy Temple, Eluru Town (hereafter called, the subject temple). The petitioner seeks a writ of Mandamus declaring the said impugned letter of fifth respondent as illegal and arbitrary and to set aside the same.

The petition allegations are as follows. The petitioner Association was registered as a Society in 1971 vide Registration No.101/1971. The lorry stand was adjacent to old bus stand. This created traffic congestion. Traffic Advisory Committee requested the District Collector, West Godavari, sixth respondent, to lay a mini bypass road through Vatluru gate through Eastern side of Eluru town by re-locating the lorry stand, timber depots and saw mills in the area. The sixth respondent directed the petitioner Association to shift the lorry stand to a place outside the town. As a result of this, a decision was taken to allot alternate land to the petitioner. A joint meeting of officials was convened on 01.08.1992 and the sixth respondent issued

proceedings bearing Doc.No.K3/6032/92, dated 18.07.1992, wherein it was decided to allot an extent of Acs.5.00 of land in survey No.697 belonging to subject temple to petitioner Association.

As instructed by District Collector, the petitioner Association after obtaining consent of the Assistant Commissioner removed debris, developed the land and constructed structures like sheds, pump house and borewell. Electricity and Telephone Departments provided electricity and telephone connections to the members of the petitioner Association using the area for parking the vehicles. However, the Government did not issue necessary formal orders allotting the land in survey No.697 to the petitioner Association though the Government allotted the land admeasuring Acs.5.89 belonging to Sri Ramalingeswara Swamy Temple to Tadepalli Lorry Owners Association, vide G.O.Ms.No.133, dated 23.02.2001.

It is alleged that the petitioner submitted a representation on 17.05.2001 to the Hon'ble Minister for Endowments, in response to which, the revenue authorities valued the land at Rs.91,000/- per acre. The petitioner submitted its willingness to pay the said amount for purchasing the land. However, the same could not fructify because one Chekuri Satyanarayana Raju filed cases before the Courts claiming himself to be the tenant of the subject temple. In O.S.No.2 of 1993 the Court of the Additional Senior Civil Judge, Eluru, passed decree on 10.08.2000 directing the respondents to remove the lorry stand. The petitioner herein filed A.S.No.153 of 2000 on the file of the Court of the II Additional District Judge, Eluru. The appeal was allowed and the said suit was dismissed. The petitioner then submitted a representation on 30.10.2003 to the fifth respondent to take necessary action in the matter, in vain. All of a sudden the fifth respondent issued the impugned proceedings purportedly under Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'), without giving any notice to the petitioner nor calling for explanation. A reference is made in the impugned order to the judgment in A.S.No.239 of 2004, dated 13.09.2006 on the file of the Court of the Principal District Judge, Eluru, to which the petitioner is not a party. Therefore, the impugned order is illegal and arbitrary.

The matter is coming up for admission from 09.02.2007. Learned Assistant Government Pleader for Endowments at the initial stage submitted that the petitioner has nothing to do with the land belonging

to the subject temple, and that necessary orders were passed under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short 'the Rules'), duly issuing notice under Rule 5 of the Rules, and therefore, the impugned order is sustainable. After taking time, the learned Assistant Government Pleader filed counter affidavit of the fifth respondent. The petitioner also filed a reply affidavit as well as the additional material papers. Therefore, the matter was finally heard at the stage of admission.

The case as disclosed in the counter affidavit of the fifth respondent is as follows. The land of the subject temple was originally leased out to Satyanarayana Raju for a period of three years from 1989-1992. The lease expired. However, he filed O.S.No.2 of 1993 against the petitioner for removal of lorry stand. The same was decreed, against which, the petitioner filed A.S.No.153 of 2000. The appeal was allowed. In the meanwhile, the temple filed a petition against the tenant for eviction from the land for default in payment of the rents. The same was also informed to the District Collector. The petitioner encroached upon the land and put up temporary tin sheet roof with wooden poles and dug a bore-well without obtaining permission from the second respondent with a view to knock away the land which is of high potential value. The lessee was directed to evict, in the related proceedings. Subsequently, in 1996 Satyanarayana Raju died, and therefore, notice in Form No.I under Rule 5 of the Rules was issued to his adopted son Chekuri Satya Prasada Raju, who filed O.S.No.499 of 2003 on the file of the Court of the I Additional Junior Civil Judge, Eluru, for temporary injunction. The suit was dismissed on 04.10.2004, aggrieved by which, A.S.No.239 of 2004 was filed, which was also dismissed on 13.09.2006 by the Court of the Principal District Judge, Eluru. While these proceedings were pending Satya Prasada Raju filed an application before the Assistant Commissioner seeking declaration that he is a landless poor person. The same was rejected on 07.01.2006 in R.P.No.9 of 2006. Therefore, the impugned order issued by the fifth respondent seeking Police aid to remove the encroachments is in accordance with the provisions under Section 84(1) of the Act.

In the reply affidavit, the petitioner does not specifically deny that the Government or the Commissioner did not pass any orders for alienation of land of the temple in their favour. The allegation is that

unless and until order under Section 83(4) of the Act is passed by the Deputy Commissioner, action under Section 84 of the Act, cannot be taken.

Learned Counsel for the petitioner placed strong reliance on the minutes of the meeting held in the Collector's Office on 01.08.1992. As per these minutes, it was proposed to acquire the land admeasuring Acs.9.32 cents in R.S.No.77 situated at Darsiparru Village of Pentapadu Mandal and another extent of Acs.5.00 in Eluru for construction of lorry stand at Tadepalligudem and Eluru Town respectively. The Lorry Owners Association also consented to provide a path to Endowments Department to have access to remaining part of the land. The meeting also requested the Revenue Divisional Officer, Eluru, and the Mandal Revenue Officers, Eluru and Pentapadu, to assess the market value with reference to Registration Statistics by taking necessary action. It was further decided that Mandal Revenue Officer should initiate action to remove the encroachments at Tadepalligudem. These were only proposals but nothing fructified with these proposals. As rightly pointed out, any proposal for alienating the land belonging to the religious institution has to be approved by the Commissioner of Endowments under Section 80(1)(b) of the Act, and after getting such approval, ordinarily, auction is to be conducted though under proviso to Section 80(1) of the Act it shall be competent to the Government to permit the sale of the land otherwise than by public auction. If the petitioner asserts that the land was allotted to it, no such proceedings are placed before this Court, in the absence of which, the submission cannot be accepted. Secondly, in the case of Tadepalligudem, admittedly the Government issued G.O.Ms.No.133, dated 23.02.2001, but no such Government Order was issued by the Government under proviso to Section 80(1) of the Act. This itself would belie any right claimed by the petitioner-Association. Reply affidavit is filed by the petitioner, but nowhere the allegations of the fifth respondent that the land was leased out to the tenant, that the adopted son of the tenant was not declared as a landless poor person and that Form No.I notice was issued were denied. Therefore, the question is whether an order of the Deputy Commissioner to remove the encroachment under Section 83(4) of the Act should precede action under Section 84(1) of the Act or notice.

Section 83 of the Acts deals with eviction of encroachers of land or building belonging to the charitable or religious institution. If any

land is encroached upon by a person, the Assistant Commissioner or the Trustees of the Institution may file a complaint before the Deputy Commissioner having jurisdiction seeking an order of eviction. Subsection (2) of Section 83 of the Act enables the Deputy Commissioner to pass an order to remove the encroachment after issuing notice to the encroacher. When once such an order is passed, Section 84(1) of the Act springs into action, under which, the Assistant Commissioner with the help of Police Officer can remove the encroachment as per the order under Section 83(4) of the Act. This procedure, however, is not required to be followed when Section 82 of the Act is enforced.

Section 82 of the Act renders all leases of agricultural land belonging to the religious institution nullity. They stand cancelled with effect from 26.08.2002 when Section 82 of the Act was amended as A.P.Act No.27 of 2002 and came into force. The exception to the said provision is, however, in the case of a landless poor person, who is entitled either to purchase the land at the market value when the Institution decides to sell or continue as tenant paying at least 2/3rd of the market rate. The tenant claiming himself to be a landless poor person as defined in the "Explanation" to subsection (2) of Section 82 of the Act has to seek such declaration by filing an application under Rule 3 of the Rules. In case such tenant is not landless poor person, it shall be open to the religious institution to issue notice in Form No.I under Rule 5 of the Rules. Rule 5(1) of the Rules deals with a cultivating tenant other than a landless poor person and Rule 5(2) of the Rules deals with a landless poor person when an option is issued to purchase the land. In this case, the adopted son of the tenant, Satya Prasada Raju, was not declared as a landless poor person. In fact, his application under Rule 3 of the Rules was dismissed by the Assistant Commissioner vide proceedings in Rc.No.A3/3951/2003, dated 07.01.2006, as he was found to be tenant of Acs.10.47 cents in R.S.Nos.697 and 702 belonging to the subject temple. Against this, he filed Appeal No.9 of 2006 before the fourth respondent and the appeal was dismissed on 03.07.2006. Both these orders are annexed to the counter affidavit filed by the fifth respondent. In such a case, Rule 5(1) of the Rules applies, which reads as under.

> **5. Issue of Notice :-** (1) A Notice in Form No.1 annexed to these rules shall be issued to the cultivating tenant (other than a landless poor person) duly informing him that the

> lease held by him stood cancelled by virtue of the provisions in sub-section (1) of Section 82 of the Act, and that the lease hold rights in respect of the said lands are proposed to be leased out as per rules and calling upon him to forthwith handover possession of the lands failing which he shall be evicted invoking the provisions under Sections 84, 85 and 86 of the Act, treating him as an encroacher in the order passed under Section 83(4) of the Act.

A bare perusal of the same would show that when a cultivating tenant is not a landless poor person, is shall be competent to the appropriate authority to issue notice in Form No.I annexed to the Rules, calling upon the occupant to handover possession of the lands forthwith, failing which, he shall be evicted invoking the provisions of Sections 84, 85 and 86 of the Act treating such occupant as an encroacher in the order passed under Section 83(4) of the Act. This means that when Rule 5 of the Rules is invoked in relation to a cultivating tenant, who is not a landless poor person, no orders under Section 83(2) or (4) of the Act are required. Straightaway, action can be taken under Section 84 of the Act. Indeed, as rightly pointed out by the learned Assistant Government Pleader, even Form No.I also specifically means that if the occupant fails to handover possession within thirty days action may be taken under Section 84 of the Act. In this case, the Assistant Commissioner issued notice in Form No.I, and thereafter, addressed the impugned communication to the Deputy Superintendent of Police, which is in accordance with Section 84(1) of the Act. The said communication does not suffer from any vice or infirmity. The same was done strictly in accordance with the provisions of the Act and the Rules. The petitioner also does not deny that the tenant was Satyanarayana Raju and thereafter Satya Prasada Raju, and therefore, it is competent for the Assistant Commissioner to remove the encroachment and obtain possession of the land. No separate action is necessary under Section 83 of the Act.

The Writ Petition is devoid of merits, and is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

05.04.2007
vs